Supreme Court, U.S.
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No. 05-781

In The

Supreme Court of the United States

RONALD D. PLANESI,

Petitioner,

vs.

U.S. COPYRIGHT OFFICE ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION FOR REVIEW

Does 37 C.F.R. 202.1(a), with the aid of the lower courts' "statutory construction," contravene the intent of the authors of the U.S. Constitution, in particular Article I, Section 8, Paragraph 8, and the intent of the several ratifying states, which granted the power to Congress to protect the writings of authors and inventors, and through the protection of those works, promote commerce as well as "Science and the useful Arts"?

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CORPORATE DISCLOSURE

Not Applicable.

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CITATION OF ORDERS

United States District Court for the Eastern District of California, No. CIV S-03-2062 MCE DAD-PS, filed September 15, 2004.

United States Court of Appeals for the Ninth Circuit, No. 04-16936, filed August 15, 2005.

BASIS FOR JURISDICTION

Appeal is sought from the United States Court of Appeals from the Ninth Circuit and, as well, the United States District Court for the Eastern District of California. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(2).

Copyright mandates and statutes are federal, and acceptance of an application for, and the granting of, Copyright is a federal function.

U.S. Constitution, Article III, Section 1, "The judicial Power of the United States shall be vested in one supreme court. . . . "

U.S. Constitution, Article III, Section 2, Clause 1, "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution. . . . "

Rule 29.4(b) of (c), Notifications have been made.

CONSTITUTIONAL PROVISION

The U.S. Constitution is a federal founding document, and states that Congress is granted the power, in Article I,

Section 8, Paragraph 8, "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors, the exclusive right to their respective Writings and Discoveries."

REGULATION

Title 17 United States Code, Section 101. Definitions, "'Literary works' are works, other than audiovisual works, expressed in *words*, numbers, or other *verbal* or numerical *symbols* or *indicia*, regardless of the nature of the material objects. . . . "

Title 17 United States Code, Section 102. Subject matter of copyright: In general: "(a) Copyright protection subsists, in accordance with this title, in *original works* of authorship fixed in any *tangible* medium of expression, now or later developed, from which they can be perceived, reproduced, or otherwise communicated. . . . "

37 C.F.R. 202.1(a) is a federal regulation, stating, "The following are examples of *works* not subject to copyright and applications for registration of such works cannot be entertained: (a) *Words* and short phrases such as *names, titles*. . . . "

STATEMENT OF THE CASE

The U.S. Copyright Office published, attendant to 37 C.F.R. 202.1, informational Circulars 32 and 34, wherein it is stated that a "title" is not copyrightable, without noting that indicia, if original, are specifically listed as protectable under Title 17 Copyright statutes, and without noting

that indicia may also be used as a "title," and also disregarding the fact that the U.S. Constitution, Article I, Section 8, Paragraph 8, states, "writings," and the U.S. Copyright Act of 1909 states, "all writings," both evident without stricture as to brevity.

In 1984, 37 C.F.R. 202.1 was not (and still is not) listed or cited in Title 17 statutes or in Copyright Application Forms or Instructions.

In the period from January 26, 1984 to May 14, 1984, the single original word, KINGMASTER, was created to convey and carry a complete thought and specific meaning and environment of complex meaning to domestic and international (non-English speaking) markets, and Copyright registration TXU 160-239 was obtained for said original word as the specifically expressed title for a innovative, hexagon-based "two to six player chess game," as an indicia for winning said two to six player game in a most difficult and specifically delineated method of play (one against all), an appellation and indicia for winning said game in said specific method of play, an organizational and business entity name for national and international market entry, and, as well, for the actual description, delineation and rules for said specific game. Being poor of any resource save time and creative energy, Ronald D. Planesi did carefully examine Title 17 of the United States Code prior to submission for Copyright, particularly for a certainty of intellectual property protection per the U.S. Constitution, Article I, Section 8, Paragraph 8, for all listed elements, and also examined Trademark regulation for marketing and dissemination considerations. Trademark, however, in 1984, was statutorily unavailable due to a lack of on-going interstate commerce.

In 1984 Ronald D. Planesi did begin to use the original word and title, "Kingmaster," as a title and indicia and did begin distribution of approximately 2000 2"x4" pictures of said game with Copyright marks imprinted as required by Chapter 17 statutes.

In 1995 Ronald D. Planesi did initiate the use of the original word and title, "Kingmaster," with appropriate Copyright mark, as a title and indicia for said "two to six player chess game," on the Internet, thus effecting completely open international dissemination.

After Ronald D. Planesi's worldwide dissemination of the original title and indicia, "Kingmaster," with appropriate Copyright marks, the U.S. Patent and Trademark Office did issue and reissue a trademark to Penn Fishing Tackle Manufacturing Company without even consulting easily available U.S. Office of Copyright internet databases to determine possible Copyright infringement, probably as a direct result of the wording of 37 C.F.R. 202.1. Penn Fishing Tackle Manufacturing Company claims to have not used the title or indicia on any product, yet continuously maintained open trademark applications without filing any active use statements and yet maintained a statement toward trademark rights for a period of approximately eight years (terminating such within this action).

Also, after Ronald D. Planesi's worldwide dissemination of the original title and indicia, "Kingmaster," Southern Kingfish Association LLC did use the specifically expressed indicia and title, "Kingmaster" as an indicia and title for several fishing tournaments conducted on the east and gulf coasts of the United States, and Kingmaster LLC did use the specifically expressed indicia and title for a

company name and as the title for a series of cable television programs viewed primarily on Liberty (eastern and gulf coast cable) channels from approximately 1998 to 2004.

In addition, after Ronald D. Planesi's worldwide dissemination of the original title and indicia, "Kingmaster," Excalibur Electronics, Inc. did use the specifically expressed indicia and title for gainful profit by placing said indicia and title on several of Excalibur Electronics, Inc.'s common "square-based" two-player computer chess variant games, similar as to other Internet-available and store-available games, thereby using the expressed indicia and title to differentiate itself from its competitors starting approximately in the year 2000 and continuing to do so until this present day.

Case CIV.S-03-2062 MCE DAD-PS was filed in the United States District Court for the Eastern District of California on September 30, 2003. The issue of 37 C.F.R. 202.1(a)'s variance against the U.S. Constitution, Article I, Section 8, Paragraph 8, was raised in initial brief (Page 11, lines 11 through 16). Penn Fishing Tackle Manufacturing Company was the sole respondent represented at the single concurrent Status and Motion to Dismiss Conference (despite service of all parties, including Federal agencies and Attorneys General, by USPS receipted and noticed overnight Express method of registered mail) which was conducted on January 9, 2004. The case was dismissed without further hearing on September 15, 2004 for "failure to state a claim."

Appeal 04-16936 was timely submitted to the United States Court of Appeals for the Ninth Circuit on October 28, 2004. The issue of 37 C.F.R. 202.1(a)'s variance against